

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN K. HERBSTER,

Case No. 13-11932

Plaintiff,

Sean F. Cox

v.

United States District Judge

COMMISSIONER OF SOCIAL SECURITY,

Michael Hluchaniuk

Defendant.

United States Magistrate Judge

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**REPORT AND RECOMMENDATION  
MOTION FOR ATTORNEY FEES  
PURSUANT TO 42 U.S.C. § 406(b)(1) (Dkt. 24)**

**I. PROCEDURAL HISTORY**

On April 30, 2013, plaintiff filed the instant suit seeking judicial review of the Commissioner's unfavorable decision disallowing benefits. (Dkt. 1). Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.1(b)(3), District Judge Sean F. Cox referred this matter to then Magistrate Judge Laurie J. Michelson for the purpose of reviewing the Commissioner's decision denying plaintiff's claim for a period of disability and disability insurance benefits. (Dkt. 2). The parties submitted a stipulation to remand this matter for further administrative proceedings, which was entered by Judge Cox. (Dkt. 13). Judgment was then entered in plaintiff's favor. (Dkt. 14). On January 3, 2014, plaintiff filed a motion for attorney fees under the Equal Access to Justice Act (EAJA). This matter was referred to Judge

Michelson. (Dkt. 16). On March 20, 2014, this case was reassigned to the undersigned magistrate judge and the motion for attorney fees was then referred on April 1, 2014. (Dkt. 20). The undersigned issued a report and recommendation on the motion for EAJA fees, which was adopted by Judge Cox. (Dkt. 22, 25).

Plaintiff then filed a motion for attorney fees under 42 U.S.C. § 406(b)(1). (Dkt. 24). The government did not file a timely response to this motion and informed court staff via electronic mail that it does not oppose the motion. In addition, along with the motion, counsel for plaintiff provided a Certificate of Consultation indicating that the Commissioner will not consent, but does not object to the motion for attorney fees. (Dkt. 24-4). Plaintiff included a proposed order for entry along with the motion for attorney fees. (Dkt. 24-1).

## **II. RECOMMENDATION**

Based on the foregoing, the undersigned **RECOMMENDS** that (1) plaintiff's motion for attorney fees be **GRANTED**; (2) that the Court enter the proposed order granting plaintiff's motion in the form attached to the unopposed motion. (Dkt. 24-1).

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right

of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2), Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as "Response to Objection No. 1," "Response to Objection No. 2," etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: December 10, 2014

s/Michael Hluchaniuk  
Michael Hluchaniuk  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

I certify that on December 10, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to all counsel of record.

s/Tammy Hallwood

Case Manager

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